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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,103	11/14/2001	Richard A. Edmark	24372A	1979

28624 7590 10/24/2003

WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
P.O. BOX 9777
FEDERAL WAY, WA 98063

EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/002,103	EDMARK ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 August 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) *1-12,17-20 and 24-28* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-16,21-23 and 29-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III in the response submitted August 4, 2003, is acknowledged. Further, the Applicant's elected airlaid products as the type of nonwoven material and thermoplastic fibers as the type of bonding agent. Therefore, claims 13 – 16, 21 – 23, and 29 – 35 are pending. Claims 1 – 12, 17 – 20, and 24 – 28 are withdrawn from consideration as being drawn to a nonelected invention.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 13 – 16, 21, 22, 29 – 32, 34, and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 11, 14, and 18 of copending Application No. 09/137,453. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications have claims which are drawn to bonded nonwoven webs having crosslinked cellulosic fibers and binder fibers with overlapping density ranges. Thus, the scope of the claims in the two applications overlaps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 13 – 16, 21, 22, 29 – 32, 34, and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 25, 28, 29, 36, and 37 of copending Application No. 10/002,844. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications have claims which are drawn to bonded nonwoven webs having crosslinked cellulosic fibers and binder fibers with overlapping density ranges. Thus, the scope of the claims in the two applications overlaps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 13 – 16, 21, 22, 29 – 32, 34, and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 11, 14, 18, and 20 of copending Application No. 10/184,339. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications have claims which are drawn to bonded nonwoven webs having crosslinked cellulosic fibers and binder fibers with overlapping density ranges. Thus, the scope of the claims in the two applications overlaps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 13, 16, 21 – 23, 29, and 32 – 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Graef et al. (WO 98/24960).

Graef et al. '960 discloses an airlaid product comprising crosslinked cellulosic fibers bonded together by bicomponent thermoplastic binder fibers (abstract). The airlaid fabric has a density of between 0.02 and 0.2 g/cm^3 (page 12, lines 20 – 22). Further, additional components can be added to the airlaid fabric including super absorbent particles made from cellulosic derivatives (page 6, lines 18 – 31). Finally, the airlaid material is used as an absorbent layer in various products including diapers and hygienic products (page 1, lines 6 – 14). Thus, claims 13, 16, 21 – 23, 29, and 32 – 35 are anticipated by Graef et al. '960.

8. Claims 13, 16, 21, 23, 29, and 33 – 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Lash (5,531,728).

Lash discloses an absorbent structure comprising chemically stiffened fibers and binding means (abstract). The term "chemically stiffened fibers" refers to cellulose fibers which have been chemically treated by means such as crosslinking (column 8, line 50 – column 9, lines 19). The binding means can be additional fibers which are incorporated into the absorbent structure and melted to bind the chemically stiffened fibers together (column 13, lines 34 – 41). Examples

of these types of fibers include synthetic fibers, such as thermoplastic polyester and nylon fibers, as well as bicomponent fibers (column 14, lines 1 – 8). Further, the absorbent material should have a density between 0.02 and 0.2 g/cm^3 (column 7, lines 65 – 67). Finally, Lash teaches that absorbent layer can be produced by airlaid techniques to form a web of a desired density and basis weight (column 11, lines 55 – 56). Therefore, claims 13, 16, 21, 23, 29, and 33 – 35 are anticipated by Lash.

9. Claims 13, 16, 21, 22, 23, 29, and 32 – 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Scott, Jr. et al. (2002/0032421 A1).

Scott, Jr. et al. discloses a nonwoven absorbent airlaid material comprising short fibers and an interfiber binder (abstract). The absorbent material can be used in hygiene products and bandages (paragraph 2). The binder fibers are thermoplastic synthetic fibers including sheath/core bicomponent fibers (paragraph 25). Additionally, the nonwoven material can include superabsorbent polymer fibers produced by reacting crosslinking agents with cellulosic material (paragraph 29).

10. Claims 13, 16, 21, 22, 29, 32, 34, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Graef et al. (2002/0026166 A1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Graef et al. '166 discloses an absorbent layer composed of crosslinked cellulosic fibers and a binder (abstract). The binder material is preferably a thermoplastic fibers and multicomponent fibers (paragraph 34). The absorbent layer can also include superabsorbent materials which are cellulosic based (paragraph 28). The absorbent layer preferably has a density of between 0.02 and 0.2 g/cm^3 (paragraph 57). The absorbent layer is used in absorbent products such as diapers and hygiene products (paragraph 3). Therefore, claims 13, 16, 21, 22, 29, 32, 34, and 35 are anticipated

11. Claims 13, 16, 21, 22, 29, 32, 34, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Graef et al. (2003/0018311 A1)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Graef et al. '311 discloses a nonwoven material comprising crosslinked cellulosic fibers, a bicomponent binder fiber (abstract). The nonwoven material is used as an absorbent layer in absorbent products such as diapers and personal care products (paragraph 3). The product can include additional fibers including superabsorbent materials (paragraph 28). The nonwoven fabric has a density of between 0.02 and 0.2 g/cm^3 (paragraph 57). Therefore, claims 13, 16, 21, 22, 29, 32, 34, and 35 are rejected.

Claim Rejections - 35 USC § 102/103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 14, 15, 30 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Graef et al. '960.

Although Graef et al. '960 does not explicitly teach the limitations density recovery, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. nonwoven fabrics comprising crosslinked cellulosic fibers and thermoplastic fibers) and in the similar production steps (i.e. producing an airlaid product and melting the thermoplastic fibers to bond the cellulosic fibers together) used to produce the absorbent layer. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Graef et al. '960. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 14, 15, 30 and 31 are rejected.

14. Claims 14, 15, 30, and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lash.

The features of Lash have been set forth above. Although Lash does not explicitly teach the limitations density recovery, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e.

nonwoven fabrics comprising crosslinked cellulosic fibers and thermoplastic fibers) and in the similar production steps (i.e. producing an airlaid product and melting the thermoplastic fibers to bond the cellulosic fibers together) used to produce the absorbent layer. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Lash. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 14, 15, 30 and 31 are rejected.

15. Claims 14, 15, 30, and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Scott, Jr. et al..

The features of Scott, Jr. et al. have been set forth above. Although Scott, Jr. et al. does not explicitly teach the limitations density recovery, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. nonwoven fabrics comprising crosslinked cellulosic fibers and thermoplastic fibers) and in the similar production steps (i.e. producing an airlaid product and melting the thermoplastic fibers to bond the cellulosic fibers together) used to produce the absorbent layer. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Scott, Jr. et al.. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 14, 15, 30 and 31 are rejected.

16. Claims 14, 15, 30 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Graef et al. '166.

Although Graef et al. '166 does not explicitly teach the limitations density recovery, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. nonwoven fabrics comprising crosslinked cellulosic fibers and thermoplastic fibers) and in the similar production steps (i.e. producing an airlaid product and melting the thermoplastic fibers to bond the cellulosic fibers together) used to produce the absorbent layer. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Graef et al. '166. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 14, 15, 30 and 31 are rejected.

17. Claims 14, 15, 30 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Graef et al. '311.

Although Graef et al. '311 does not explicitly teach the limitations density recovery, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. nonwoven fabrics comprising crosslinked cellulosic fibers and thermoplastic fibers) and in the similar production steps (i.e. producing an airlaid product and melting the thermoplastic fibers to bond the cellulosic fibers together) used to produce the absorbent layer. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would

obviously have been provided by the process disclosed by Graef et al. '311. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 14, 15, 30 and 31 are rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
October 16, 2003

CHERYL A. JUSKA
PRIMARY EXAMINER